IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 1162 of 2007

Date of decision: 20.9.2007

Randhir Singh Saluria … Petitioner

Versus

State of H.P. through Secretary (Youth & Sports) … Respondent

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Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Ajay Mohan Goel, Advocate

For the respondent: Ms. Jyotsna Rewal Dua, Advocate.

Per V.K. Ahuja, J.:

The present writ petition has been filed by the petitioner under Articles 226, 227 of the Constitution of India against the order passed by the learned H.P. State Administrative Tribunal on 6.7.2007 in O.A. No. 3504/2006 vide which Original Application filed by the petitioner was dismissed.

Briefly stated the facts of the case are that the petitioner was appointed as Deputy Director in the office of Mountaineering Institute Manali in the year, 1992. It was further alleged that the headquarters of the Directorate of Mountaineering and Allied Sports is located at Manali and the head of the department is Director and thereafter comes the post of Deputy Director. It was alleged that the

[1]Whether reporters of Local Papers may be allowed to see the judgment?

post of Director and Deputy Director exists at Manali headquarters only. There exists a regional Mountaineering Institute at Dharamshala and there is no post of Deputy Director at Dharamshala. The petitioner vide order dated 18/22.10.2005 was transferred to Regional Mountaineering Centre, Dharamshala where no such post existed. Earlier also the petitioner was ordered to be transferred to Dharamshala vide order dated 31.7.2002, which order was revoked on 6.1.2003 when it was brought to the knowledge of the State that no post of Deputy Director exists at Daramshala. The order dated 18/22.10.2005 was challenged before the State Administrative Tribunal by the petitioner by filing of Original Application and the State Administrative Tribunal ordered status quo regarding the implementation of the order.

Thereafter, the respondent/State issued another notification dated 23.11.2006 whereby the post of Deputy Director has been ordered to be shifted from Manali to Regional Centre, Dharamshala. The said notification was challenged by the petitioner before the learned State Administrative by filing an Original Application. The said act of the respondent/State in transferring the petitioner and shifting of the post of Deputy Director from Manali to Dharamshala was challenged by the petitioner being arbitrary and act of colourable exercise of power. It was alleged that the post cannot be shifted to Regional Centre without justification or valid reasons and there is no requirement of a Deputy Director at Regional Centre, Dharamshala. The Original Application filed by the petitioner was dismissed by the learned State Administrative Tribunal vide its impugned order dated 6.7.2007, which order is under challenge before us.

Reply was filed by the respondent and they pleaded that there is no illegality or irregularity in the order passed by the State

Administrative Tribunal vide which the petitioner was transferred alongwith post and he has been rightly transferred alongwith post. On facts it was pleaded that the Regional Mountaineering Centre Dharamshala, caters to four districts and the said Centre is conducting trekking activities, Mountaineering Expeditious, Adventures Courses, Trekking Guide Courses, Skiing Courses and Rescue Operations in Mountaineering and Paragliding etc. and since no senior officer was posted in Dharamshala and to start Eco-Tourism and Religious Tourism in that area, Dharamshala Centre had to be strengthened and accordingly, the petitioner was transferred in the public interest.

We have heard the learned counsel for the parties and have also gone through the record.

A perusal of the record shows that the respondent has justified the transfer order by mentioning that Regional Centre at Dharamshala caters to four districts and various courses are to be started and to augment income from tourism and to start Eco-Tourism etc. in that area, a senior officer was appointed and since the petitioner happened to be the only Deputy Director at that time, he was shifted to Dharamshala in the public interest. During the course of arguments annual administrative report submitted to the State Government was also placed on record which report was submitted by the Deputy Director, namely, the petitioner himself in which he has referred to the various future programmes in the Kangra region which are to be undertaken and sub-centres are to be started in the various parts of the districts, therefore, the respondent has justified the transfer order passed as against the petitioner.

The petitioner has not alleged any malafide in the Original Application filed before the State Administrative Tribunal. The petitioner

has only alleged that the order was not passed in public interest and it was an act of colourable exercise of power by the respondent/State in shifting the petitioner from Manali. During the course of arguments, the petitioner's counsel had tried to bring some facts to the notice of the Court that the petitioner has been transferred to Dharamshala office, where there is no telephone facility, table etc. However, it was brought to the notice of this Court by the respondent's counsel that the petitioner joined at Dharamshala and for most of the period he has been on leave and has also applied for further leave and it is for the petitioner to make these arrangements in case they do not exist at the office at Dharamshala.

The petitioner admittedly is the senior most officer and the only Director though some other posts have been upgraded to the post of Deputy Director for the present. He cannot have any grievance that he should have been posted in the head office at Manali as argued during the course of arguments or that the powers of Drawing and Disbursing Officer have been conferred upon a person newly promoted as Deputy Director who will exercise the powers of Director since the post of Director is vacant at present. The respondent's counsel had submitted during the course of arguments that the post of Director has fallen vacant recently and has to be filled up in due course and presently the charge is with Deputy Commissioner, Kullu, as per rules and there is no question of the exercise of the powers of Director by the person posted as Deputy Director at Manali for the present. It is for the State Government to consider to whom the powers of Drawing and Disbursing Officer should be given to run the office and the petitioner has no inherent right to be posted in the head office. It is for the employer to consider where the services of an employee can be

utilized in a better manner and keeping in view the fact that the Regional Centre at Dharamshala, caters to four districts in place of one under Manali Centre and various programmes are to be undertaken by the department, the department may have though it fit to utilize the services of senior most Deputy Director i.e. the petitioner. It does not lie in the mouth of the petitioner to make such allegation that there is no table or telephone at Dharamshala office since that office is in existence since long and some staff is already posted there and once the post of Deputy Directory has been shifted to Dharamshala it is for him as the Incharge of that office to make suitable arrangements and he has no occasion to make such complaints when he had been mostly on leave after joining at Dharamshala. In our view, the employee has to show his worth by working at the new place or new office with more vigour and show his capabilities rather than making small grievances about the phone and other facilities. It is for him as head of department to make these purchases or make these arrangements and after taking sanction from the head of the department wherever required. It is for the employer to consider whether the services of employee should be utilized in the head office or in Branch office and as such, no case is made out for quashing of the order passed by the learned State Administrative Tribunal. The learned State Administrative Tribunal had considered the plea raised before it and had upheld the order passed by the State Government which order does not call for an interference by this Court since the transfer is an exigency of service and is an administrative decision. There is no merit in the writ petition, which is liable to be dismissed and the same is accordingly dismissed. Parties are left to bear their own costs.

CMPs No. 1933 and 2305 of 2007:

In view of the orders passed in the main petition, both the applications also stand disposed of.

(Deepak Gupta),
Judge

(V.K. Ahuja),
Judge

September 20, 2007
(BSS)